



2.0

**OFFICE OF THE
CITY ATTORNEY**

SHARON SIEDORF CARDENAS
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO

**CITY OF SACRAMENTO
CALIFORNIA**

September 19, 1991

921 TENTH STREET
SUITE 700
SACRAMENTO, CA
95814-2717

PH. 916-449-5346
FAX 916-449-6755

DEPUTY CITY ATTORNEYS:
EVELYN M. MATTEUCCI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON
JOSEPH McINERNEY
JOE ROBINSON
LESLIE R. LOPEZ

Honorable Mayor and Members
of the City Council
City Hall
Sacramento, California 95814

Honorable Members in Session:

**SUBJECT: REDISTRICTING - VOTING RIGHTS ACT,
POPULATION EQUALITY**

At your September 11, 1991 special City Council meeting on redistricting you requested that this office report back to you for your meeting of September 25, 1991, on (1) the Federal Voting Rights Act ("the Act"); (2) the issue of including too many minorities in one district (thereby diluting minority voting influence in adjacent areas [the so-called "compactness issue"]); and (3) whether it is permissible to deviate from mathematical equality in population for council districts.

SUMMARY

The Act prohibits *intentional* discrimination against minorities. Intentional discrimination can include drawing district lines which split a geographic area containing politically cohesive minority voters where the reason for the split is to preserve incumbency. Even though there is no intent to discriminate, dividing a geographic area which contains a *majority* of politically cohesive minority voters can also violate the Act under certain circumstances. In addition, a "loading" of one district with minorities which dilutes their impact in neighboring areas can also violate the Act.

Honorable Mayor and Members
of the City Council
Re: **Redistricting**
September 19, 1991
Page 2

Finally, the Courts have upheld redistricting maps that contain districts which deviate from exact mathematical equality where the basis of population deviation is clearly articulated using one or more of the criteria set forth in Charter Section 23.

DISCUSSION

I. The Voting Rights Act

Congress enacted the Act (42 U.S.C. §1973 *et seq.*) in 1965 as part of the comprehensive Civil Rights legislation designed to help "eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination." *Thornburg v. Gingles* (1986) 478 U.S. 30, 69; 92 L.Ed.2d 58. As originally enacted, §1973 stated:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

In 1982, Congress amended the Act because of the Supreme Court's decision in *City of Mobile v. Bolden* (1980) 446 U.S. 55, 57, 64 L.Ed.2d 57. *Bolden* held that an electoral scheme could not be challenged without a showing that the scheme was *intentionally* designed or maintained for a discriminatory purpose.

Under the amendment, a plaintiff in a voting rights case must show that, based on all of the circumstances, the electoral process is "not equally open to participation by the members of a [racial or language minority] in that its members have fewer opportunities than other members of the electorate to participate in the political process and to elect representatives of their choice." 41 U.S.C. §1973.¹ Thus, the Act can be violated by either

¹ The full text of the amendment (42 U.S.C. §1973(b)) reads as follows:

"(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than

Honorable Mayor and Members
of the City Council
Re: **Redistricting**
September 19, 1991
Page 3

intentional discrimination in the drawing of district lines or by facially neutral apportionment schemes that have the effect of diluting minority votes.²

The U.S. Supreme Court first reviewed the 1982 amendments to the Act in *Thornburg v. Gingles, supra*, where a redistricting plan was challenged as impermissibly diluting the voting strength of black voters. The Supreme Court held that, in order to prevail under Section 2 of the Act, a plaintiff must establish all of the following:

1. That the minority group allegedly harmed by the government practice is sufficiently large and geographically compact to constitute a majority in a single district. Without a showing that at least one district could be legally created in which the minority group could constitute a majority of eligible voters, and therefore have increased influence in the electoral process, the minority group cannot claim to be harmed by the challenged practice;

2. That the minority group is politically cohesive. Unless the minority group is politically cohesive, it will not be able to elect a representative of choice, even where a district is established in which the minority group constitutes a majority of eligible voters;

3. That the white majority votes as a bloc to enable it -- in the absence of special circumstances, such as a minority candidate running unopposed -- to usually defeat the minority group's preferred candidate. The *Gingles* court stated that this third requirement generally may be established by a simple showing that the majority candidate is usually able to defeat the minority group's candidates. 478 U.S., 50-51; L.Ed.2d, 46-47.

Gingles stated that the trial court must also consider the "totality of the

other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one of the circumstances which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

² *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 766. By dilution of minority population, it is not clear whether the Court meant the splitting of areas containing a majority of minority population, or the splitting of any area containing minorities.

Honorable Mayor and Members
of the City Council
Re: **Redistricting**
September 19, 1991
Page 4

circumstances" and determine, based on a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters. 478 U.S., 50-51; 92 L.Ed.2d, 46-47. "This determination is peculiarly dependent upon the facts of each case and requires an intensely local appraisal of the design and impact of the contested electoral mechanisms." *Id.* (citations omitted).

Applying this three-part test to the facts before it and looking at the totality of the circumstances, the Court held that, with one exception, the districts in *Gingles* violated Section 2 of the Act. 478 U.S., 80; 92 L.Ed.2d, 65.

Perhaps the most well-known case in California on the Act is *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763. In *Garza*, a group of Hispanics sought a redrawing of the Los Angeles County Board of Supervisors' district boundaries. The plaintiffs claimed that the existing boundaries were drawn to intentionally dilute the voting strength of Hispanics. The trial court found that the county had engaged in intentional discrimination in its 1959, 1965 and 1971 redistricting plans and had split a Hispanic "core" of residents into two different districts. The trial court found that the 1981 redistricting plan was designed primarily for the self-preservation of the incumbents, and that the Supervisors intended to create the very discriminatory result that occurred. *Id.* at 771.

The court then ordered the county to prepare a new redistricting plan. However, the court rejected the plan submitted by three of the Supervisors, finding it less than a good faith effort to remedy the existing violations. It then accepted and imposed a plan which created a district with a majority of Hispanic voting-age citizens.

On appeal, the county argued that the plaintiffs could not establish the first prong of the three-part *Gingles* test (geographic proximity of the minority voters to form a *majority* in a single-member district). The county argued that when the district boundaries were drawn in 1981, it was not possible to create a district with a majority of Hispanic voters.

The Court of Appeals rejected this argument, holding that where there has been *intentional* dilution of minority strength, plaintiffs need not show that a district with a majority of minority voters could have been created. *Id.* at 769. (It was because of the explosive growth of the Hispanic community in the 1980s that the District Court was able to devise a district with a majority of Hispanic voters.)

The county also argued that the trial court made insufficient findings of intent to discriminate. It claimed that the Supervisors had only intended, with the 1981 redistricting plan, to preserve their incumbencies, and that this did not amount to intentional

Honorable Mayor and Members
of the City Council
Re: **Redistricting**
September 19, 1991
Page 5

discrimination. However, the Court of Appeals held that while the Supervisors may have acted primarily on the political instinct of self-preservation, the means by which the Supervisors chose to achieve self-preservation was to fragment the Hispanic vote. The appellate court agreed with the trial court's finding that this fragmentation of voting strength resulted in a lessened opportunity for Hispanic participation in the political process, a violation of Section 2 of the Voting Rights Act. *Id.* at 771.

Finally, the county argued that the trial court improperly based its reapportionment plan on total population, rather than voting population. It argued that because so many Hispanics in the county were non-citizens, concentrating the votes of Hispanic citizens in one district would unconstitutionally weight the votes of some citizens more than the votes of other citizens (in other districts).

The court rejected this argument on two grounds. First, it noted that a fundamental principle of representative government is one of equal representation for equal numbers of people, regardless of age, sex, race, or citizenship. Thus, basing districts on the number of voters instead of total population would result in serious population inequities across districts, limiting access to representatives for individuals in districts with high percentages of non-voting persons (including non-citizens and children). Second, the court found that California Elections Code §35000 requires that reapportionment be accomplished on the basis of total population, not voting age population. *Id.* at 773-776.

On the issue of loading or compacting of minorities into one district, the U.S. Supreme Court observed in *Gingles, supra*, that dilution of minority voting strength could occur ". . . from the concentration of [the minority] into districts where they constitute an excessive majority." *Id.* at 478.

2. Permissive Deviations³ From Mathematical Equality

This issue was discussed at length in a memo dated April 11, 1991, to Deputy City Manager David Martinez and later sent to the Council. A copy of this memo is attached. To summarize, the City must make a good faith effort to create council districts as equal in population as is practical, taking into account the factors set forth in Charter Section 23:

³ Deviation here means the difference between the lowest and highest population districts expressed in percentage above and below the figure representing mathematical equality. Thus, if the district with the lowest population is 2% below mathematical equality, and the district with the highest population is 3% above, the deviation would be 5%.

Honorable Mayor and Members
of the City Council
Re: **Redistricting**
September 19, 1991
Page 6

topography, geography, cohesiveness, continuity, integrity and compactness of territory, community of interests of the districts, existing neighborhoods, and community boundaries. While the courts will not closely scrutinize deviations between districts of 10% or less, the rationale for any deviation must be clearly articulated and necessary to achieve one or more of the above goals.

Respectfully submitted,



SHARON SIEDORF CARDENAS,
City Attorney

SSC:lr